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**DECISION**



*Little*  
*Y.L.H. 2*

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20540

FILE: B-190866

DATE: May 11, 1978

MATTER OF: Kay and Associates, Inc.

**DIGEST:**

1. Protest that agency improperly considered its estimated manning in the solicitation as de facto minimum manning is denied where record shows that protester offered positions with lower skill levels than required to perform services requested.
2. Agency did not improperly exclude offeror from competition by failing to hold discussions where agency advised protester of the deficiencies in its proposal and gave protester opportunity to correct those deficiencies.
3. Protest that agency misled protester as to the importance of cost is denied where protester's claim of prejudice is based on its assumption that cost quantum was to be of primary importance, whereas the solicitation indicated that cost realism was to be of paramount importance.

Kay and Associates, Inc. (Kay) protests against the award to another offeror of a contract to perform aircraft maintenance under RFP CS77-21 issued by the Department of the Treasury, United States Customs Service (USCS). The protest is primarily concerned with the agency's evaluation of Kay's manpower estimates.

The RFP, issued by USCS on July 12, 1977 for aircraft maintenance support services, called for a cost plus fixed fee contract for a basic one year period with options for four consecutive twelve month extensions. Five firms (Kay, Serv Air, Inc., Lear Siegler, Hawthorne Aviation and ALM, Inc.) submitted proposals. After the initial technical evaluation only one firm, Serv Air, was considered within the competitive range. However, after further deliberation the agency determined that four of the firms, including Kay, should

be considered within the competitive range and negotiations were held with those four firms. At this time Kay had the second highest technical evaluation score of 204 as compared to 257 for Serv Air. After discussions the revised technical and cost proposals were evaluated. The initial results of the reevaluation were that Serv Air received the highest total rating (both cost and technical) of 301.45 while Kay was second with a total of 216.60. Subsequently, Lear Siegler's total score of 212.8 was raised to 256.8 making it the second highest offeror because USCS determined that it had been unfairly penalized because of a licensing technicality. Serv Air's cost estimate including fee was \$1,783,352; as compared to Lear Siegler's estimate of \$1,637,231 and Kay's of \$1,525,606.

The agency determined that the superior technical rating received by Serv Air justified an award to that firm despite the lower cost estimate of Lear Siegler. Before the award was made Kay filed its protest. However, USCS has awarded the contract to Serv Air notwithstanding the pending protest. USCS has determined that the need for a continuous aircraft maintenance program necessitated the award.

Kay's primary complaint is that its proposal was improperly downgraded because its manning proposal differed from the manpower estimates in the solicitation. In this regard Kay maintains that, contrary to the terms of the solicitation, the agency's manning estimate was used as an absolute against which Kay's proposal was measured and downgraded despite the significant cost savings which Kay's manning proposal provided. A subsidiary issue raised by Kay is that, even if its manning proposal had been given proper credit, the cost advantages generated thereby would largely have been lost, because the cost factor in the evaluation criteria was much less than USCS had represented that it would be. Finally, Kay argues that once USCS knew that its proposal did not meet USCS's requirements, USCS should have so informed Kay and given it the opportunity to correct its proposal.

USCS denies that it considered the RFP's manning requirements as other than estimates. Its position is that Kay had intended to use too few Journeyman Mechanics to perform the contract adequately. USCS states that it did consider the innovative nature of Kay's proposal, but that the intention to use so few Journeyman Mechanics outweighed any merit in the innovation.

With respect to whether USCS should have allowed Kay to revise its proposal, USCS states that it had initially found Kay to be outside of the competitive range, but conducted written negotiations in an attempt to have Kay increase the number of Journeyman Mechanics proposed. When Kay did not offer what USCS considered to be the necessary improvements, USCS found that Kay's proposal was unacceptable.

Regarding the importance of cost as an evaluation factor, USCS maintains that Kay should have raised that issue before the date set for receiving proposals. USCS insists that Kay's only argument is that the weighting of that evaluation criterion was not disclosed and that was apparent from the face of the solicitation.

The solicitation requested proposals to provide all the labor for maintaining approximately 40 USCS aircraft at seven primary maintenance sites around the United States. The Statement of Work required each offeror to list each position it proposed for the seven maintenance sites. The positions were to be proposed based on information provided in the RFP as to numbers and type of aircraft at the maintenance site, estimated numbers of flying hours, personnel needs, requirements at secondary maintenance sites, overtime, and hours of temporary additional employees.

For example, the RFP indicated that the largest maintenance site, Miami, Florida, had eleven aircraft to be maintained and contained the following estimate of positions and personnel needed:

<u>Manning</u>	<u>Shift</u>		
	<u>1</u>	<u>2</u>	<u>3</u>
Supervisor	1	1	
Supply Supervisor	1		
Quality Assurance	1	1	
Supplyman	1	1	
Avionics Man	1		
Avionics Helper	1	1	
Aircraft Mechanics	5	3	3
Electronic Technician (Radar)			
Support Equipment Mechanic	1		

In addition to listing the positions proposed, each offeror was instructed to provide resumes of all personnel

who would fill the positions. The solicitation contained a detailed job description for each of the positions. Offerors were cautioned that personnel offered must meet the minimum qualifications prescribed in the appropriate job description and that the contractor must pay wages which meet the minimum Department of Labor (DOL) standards for each position.

In its manning estimates for each site set forth in Attachment I of the solicitation the RFP refers to the position of "Aircraft Mechanic". Attachment II of the RFP lists requirements for the positions needed under the contract. Here there is no job description labeled "Aircraft Mechanic" but there are job descriptions for positions called "Journeyman Aircraft Mechanic", "Aircraft Worker" and "Aircraft Helper". Also incorporated into the RFP are DOL wage rate determinations for positions of "Aircraft Mechanic", "Aircraft Worker" and "Mechanic Helper" for each of the seven sites. The highest paid position, that of "Aircraft Mechanic" roughly corresponds with the RFP description of the "Journeyman Aircraft Mechanic" position while the lower paid DOL categories of "Aircraft Worker" and "Mechanic Helper" are rough equivalents of the RFP's "Aircraft Worker" and "Aircraft Helper" positions.

Again using Miami, Florida as the example, Kay proposed to use a mix of 18 positions as opposed to the USCS estimate of 22 positions. Kay demonstrated how it arrived at its manning estimate by using charts showing the minimum number of mechanic man hours necessary to accomplish the job, the numbers of mechanics per shift etc. Kay proposed five "Aircraft Mechanics" on the first shift and two "Aircraft Mechanics" each on shifts 2 and 3.

Section II, A.12.B. of Kay's technical proposal indicates that of a total of nine "Aircraft Mechanics" offered six are classified as "Aircraft Mechanics" and three as "Aircraft Workers". However, the resumes of the persons Kay proposes to fill these slots only classify two individuals as "Aircraft Mechanics", while five are labeled "Aircraft Workers" and two are classified as "Aircraft Helpers". An organizational chart included in Kay's proposal repeats the mix of positions as indicated in the resumes.

Personnel manning was graded under the evaluation criterion entitled "Manpower Availability, Utilization,

and Resources." This factor comprised a total of 109 out of a possible total of 322 points for all factors. Under this factor points were awarded for the manning proposed for each of the seven sites. The Miami, Florida maintenance site was typical, and the scoring format used by the evaluators is as follows:

Manning

ACFT. Maint. Supr.	Journeyman Mechanic	Aircraft Worker
1 _____	8 _____	14 _____
Asst. Supr.	9 _____	15 _____
2 _____	10 _____	16 _____
Supply Supr.	11 _____	17 _____
3 _____	12 _____	18 _____
Supply Man	13 _____	Avionics Man
4 _____		19 _____
5 _____		Avionics Helper
Q. A. Inspector		20 _____
6 _____		21 _____
7 _____		Support Equip. Mechanic
		22 _____

2 Points for Supervisor - 1 point each for other employees.

23 Available - Points - Awarded \_\_\_\_\_

With the exception of the differentiation between "Journeyman Mechanics" and "Aircraft Workers," the grading scheme appears to have been premised on each offeror's supplying the exact numbers and types of personnel contained in the Government's estimate as set forth in the RFP. The grading was accomplished by examining the resumes of the employees offered for that site and, where an individual was offered for and met the requirements of the position listed, a point (2 points in the case of the Supervisor) was awarded. For the Miami, Florida maintenance site, Kay was awarded 7 out of 11 possible points for the "Aircraft Mechanic" (two "Journeyman Mechanics" plus five "Aircraft Worker's") category. It lost two points for those persons it offered as "Aircraft Helpers" and lost 2 more points because it did not offer to fill all eleven positions. Kay lost approximately 14 points for its failure to meet the Government's estimates for "Aircraft Mechanics" in all seven sites. Kay lost a total of 28 points under this evaluation factor.

USCS states that its intent in supplying proposed manning for the sites was:

"\* \* \* in the event an offeror chose to use this suggested RFP form for proposing manning, a statement of supporting rationale was required in the proposal. This statement clearly gives the offeror the flexibility to independently determine the proposed manning in numbers and mix."

Although it appears that USCS and Kay were under the impression that the estimated manning level was not intended to be the "standard" which all proposals should meet, the fact remains that the grading system of the solicitation applied the manning estimates as de facto minimum requirements.

For the reasons that follow, we need not reach the issue of whether USCS's original evaluation of Kay's proposal was at variance with its evaluation criteria and sufficiently prejudicial to Kay so as to require another competition to be held. This is primarily because the point scoring, as such, lost most of its significance when it appeared to USCS after discussions had taken place that Kay's "proposal manning estimate is inadequate for contract performance" and therefore unacceptable. See, Dynalelectron Corporation, B-187057, February 8, 1977, 77-1 CPD 95.

The record shows that the USCS considered but rejected the idea of defining the competitive range so as to include only one offeror, Serv-Air, Inc. Subsequently, USCS submitted written questions to the four offerors in the competitive range. Two of the eight questions submitted to Kay dealt directly with Kay's proposed manning. They are as follows:

"(4) How will A/C [Aircraft] Helpers maintain Federal Aviation Administration certified A/C?"

"(5) Explain how you intend to cover three air support branches operating 24 hours a day, 7 days a week, with one (1) QA [Quality Assurance] man, two (2) supplymen, and two (2) journeymen mechanics per branch."

Implicit in question 4 was USCS's concern that "Aircraft Helpers", which are, by DOL or the solicitation standards, positions of comparatively little expertise or experience, would be called upon to perform higher order maintenance tasks. Kay's response indicates that it understood the agency's concern. Kay states that it purposely proposed personnel to fill "Aircraft Helper" positions, who in many cases were qualified "Journeyman Mechanics", in order to hold down the costs of paying such personnel at the higher wage rates. Kay indicated that, therefore, FAA certified aircraft would, in fact, not be maintained by persons who only met the qualifications of "Aircraft Helper".

Question 5 carried two clear implications with respect to the number of "Journeyman Mechanics" that Kay had proposed for the three major maintenance sites. The first was that USCS had read Kay's proposal as offering only two "Journeyman Mechanics" per site. The second implication was that USCS wanted an explanation as to how those two "Journeyman Mechanics" could provide maintenance literally on an around the clock basis. Kay answered that it had proposed--by name and license--to man each of the sites with more than two "Journeyman Mechanics".

Kay's answer to question 4 was a statement that it intended to use the personnel listed as "Aircraft Helpers" to perform tasks properly assignable to more highly paid and qualified "Aircraft Mechanics" (Journeyman Mechanics) and "Aircraft Workers". The record shows that on several occasions, one of which was at a conference held at this Office, Kay stated that if the personnel assigned to the "Aircraft Helper" positions were no more qualified than the job descriptions for which they were offered, Kay would be unable to perform the contract satisfactorily.

Kay's answer to question 5 indicates that Kay ignored the implication that USCS, having read Kay's proposal, had determined that Kay was offering only two "Journeyman Mechanics". It should have been obvious to Kay that USCS was not evaluating Kay's proposal on the basis of the qualifications of the personnel offered, but, rather, on the basis of the positions that such personnel would hold. Thus, Kay's responses indicated to USCS that Kay recognized that more than two "Journeyman Mechanics" per site were necessary, but that Kay intended to offer such personnel in lower paying "Aircraft Workers" and "Aircraft Helper" positions.

USCS states that it had three reasons for rejecting Kay's proposal once Kay's response to the written questions were evaluated. First, was that USCS considered Kay's proposal as "an attempt to circumvent the Service Contract Act" (41 U.S.C. 351 et seq. (1970)). Second, USCS states that paying personnel at rates not commensurate with the work they do would cause excessive turnover, interrupting work continuity, quality, and reliability. Third, Kay would only be obligated during the first 90 days of performance to supply persons actually meeting the minimum position requirements, which, as USCS points out, y admits would mean that Kay could not perform satisfactorily. (The RFP provides that the contractor need only get agency approval for personnel changes for the first 90 days of contract performance.) In short, USCS maintains that Kay did not offer to perform the contract with a sufficient number of high skill level positions.

It is clear from the record that Kay, in effect, offered positions with lesser skill levels than required, but offered to fill them with personnel who were over-qualified for these positions and, arguably, sufficiently qualified to perform USCS's estimated maintenance requirements. USCS was understandably concerned that in the event a more highly trained individual left a position calling for a less qualified person, USCS, having accepted the position as adequate, would have no grounds to complain if the position were filled by someone whose skills were merely commensurate with that position. We have no basis to disagree with USCS's conclusion that this rendered Kay's proposal unacceptable.

On the question of whether meaningful negotiations were held, we noted in the prior discussions regarding site manning that the questions propounded by USCS provided Kay with the opportunity to clarify those aspects of its proposal which concerned USCS. It is clear from the record that Kay's responses did not remedy those matters which USCS considered to be weaknesses of the original proposal, and which ultimately led to the determination of technical unacceptability. We consider negotiations to be meaningful if an offeror is advised of proposal deficiencies, and is given a reasonable opportunity to correct or resolve the deficiencies. United Southeastern Tribes, Inc., B-185659, November 2, 1976, 76-2 CPD 375. We believe the record shows that this



standard was met. Once discussions have taken place and revised proposals have been received, there is no requirement that the negotiation process be extended to provide an offeror with a further opportunity to explain or revise its proposal. Genesee Computer Center, Inc., B-188797, September 28, 1977, 77-2 CPD 234; Bell Aerospace Company; Computer Sciences Corporation, 54 Comp. Gen. 352 (1974), 74-2 CPD 248.

USCS argues that Kay's contention that USCS changed the relative weight of the evaluation criteria is untimely raised. The RFP advised offerors of the five factors against which proposals would be evaluated and these factors were listed in descending order of importance. We have held that the disclosure of the precise numerical weights to be used in the evaluation process is not required. 50 Comp. Gen. 565 (1971). On the other hand, we have also held that offerors must be informed of the broad scheme of scoring to be employed and that the appropriate method of disclosing the relative weights of the evaluation criteria is to list the factors in descending order of importance or priority. 50 Comp. Gen. 390 (1970) and 50 Comp. Gen. 788 (1971). In our view, the issue raised by Kay is whether the criteria were weighted during the actual evaluation in descending order of importance; something which Kay could not have known prior to being advised during the debriefing of the weights actually applied. Therefore, the issue is timely.

The record shows that the criteria were weighted, as follows during the evaluation:

1. Operation and management policies	110
2. Manpower availability, utilization and resources	109
3. Cost	44
4. Mobilization (phase-in) plan	30
5. Experience	29

Technically, the criteria were weighted in descending order of importance. Although we do not believe the description of the weighting of the evaluation criteria in the RFP was legally insufficient it would have been better had the RFP stated that criteria one and two were weighted twice as much as the remaining three criteria combined and that the remaining three criteria were

roughly equal to each other in importance. But, even assuming that Kay did believe that "Cost" was to be evaluated as more than 44 out of 322 points, we cannot see how that fact could have been prejudicial to Kay (whose cost estimate was lower than the awardee's) in light of the manner in which cost was to be evaluated.

The solicitation indicated that "cost realism" was of paramount importance in evaluating the cost proposal. In this connection the solicitation stated:

"e. Cost.

Realism of pricing is of paramount importance. The Government shall utilize an in-house pricing for comparison purposes, any major deviations (above or below) will be construed as a lack of understanding of the mission requirements and cause for disqualification. For all estimates and purposes, the closer an offeror is to the Government in-house price, the greater the point assignment will be, \* \* \*. The Government in-house price is based on Attachment I [manning estimates, aircraft to be maintained, estimated flying hours, estimated overtime, etc.)."

While cost quantum in cases such as this could have been a determinative factor if two competing proposals were essentially equal, Grey Advertising Inc., 55 Comp. Gen. 1111, 76-1 CPD 325, USCS quite clearly indicated it was primarily interested in cost as an evaluation tool and only incidentally in determining which of the offeror's proposed cost estimate was lowest. Accordingly, we do not see how Kay, whose cost proposal was downgraded because it was considered too low, could have been prejudiced by the relative weight ascribed to "Cost".

Accordingly, the protest is denied.

  
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Deputy Comptroller General  
of the United States